

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 345 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

H H MAHARAJA FATESINGH FAMILY TRUST NO.2

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 06/04/99

ORAL JUDGEMENT

#. At the instance of CIT, following two questions of law have been referred to this Court for its opinion relating to assessment years 1979-80 to 1980-81:

"1.Whether, on the facts and in the circumstances

of the case, the Tribunal was right in law in coming to the conclusion that the provisions of Section 60 of the Income-tax Act, 1961 were not applicable to the facts of the case?

2. Whether in the facts and in the circumstances

of the case, the Tribunal was right in law in coming to the conclusion that the interest income earned by the beneficiaries of the assessee trust were not liable to be included in the income of the assessee trust on the principle of constructive receipt?

#. This court in ITR 252 of 1989 CIT v. H.H. Maharaj Family Trust No.1, Baroda relating to assessment year 1976-77 to 1978-79 had occasion to consider the aforesaid questions of law in similar set of facts and circumstances relating to the aforesaid Family trust NO.1. The court while deciding the aforesaid ITR 252 of 1989 on 7.1.1997 reached conclusions that the investments were made by the beneficiaries in their own right and not as the agents of the assessee trust. Therefore, the income derived by the beneficiaries from their own investments could not be regarded as income received by or on behalf of the trustees. In our view therefore, the Tribunal rightly held that the principle of constructive receipt could not be invoked by the revenue authority for justifying its stand to include the interest income earned by the beneficiaries in the hands of the trustees. The court further held that the interest income did not accrue to beneficiaries by virtue of the transaction of the loan, but it accrued to them by virtue of subsequent transactions of their having invested the amounts. It is therefore clear that the provisions of Section 60 of said Act could not have been invoked by the revenue for assessing the income of the beneficiaries in the hands of the assessee trust. The Tribunal was therefore justified in holding that the provisions of Section 60 were not applicable to the facts of the present case.

#. In the facts and circumstances of the present case, this Court answered both the questions in affirmative in favour of the assessee and against the revenue. Following the aforesaid decision, this court in assessee's own case relating to earlier years 1976-77 to 1977-78 similar question referred to above in ITR 253 of 1983 decided on 7.1.1997 answered in favour of the assessee and against the revenue in affirmative.

#. Following the aforesaid decisions, the aforesaid

questions in this case are answered in affirmative that is to say in favour of the assessee and against the revenue.

Reference is accordingly disposed of with no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)